

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court  
Southern District of Texas**ENTERED**

Robert Moore,

Plaintiff,

versus

BNSF Railway Co.,

Defendant.

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§  
§January 27, 2021  
Nathan Ochsner, Clerk

Civil Action H-19-3062

### Opinion on Summary Judgment

#### I. *Facts.*

Robert Moore was a conductor-in-training for BNSF Railway Company. After a conductor is hired, he must complete 17 weeks of training followed by a 60-day probation. Conductors-in-training are at-will employees without collectively bargained-for rights.

On August 8, 2018 – during Moore’s 60-day probation – he and an engineer drove a train 47 miles per hour in a 25 miles-per-hour zone. The next day, an anonymous caller reported the speeding violation to BNSF’s hotline and said that Moore had bragged about it to his coworkers. By August 15, the Senior Trainmaster and Road Foreman had verified the report and told Moore that he was being suspended. On August 16, Moore’s supervisor recommended firing him. Moore was fired on August 17.

Moore sued under the Americans with Disabilities Act, claiming he was fired because he had recently told BNSF that he had cancer and would need to take leave. Moore also argues that BNSF violated COBRA by not giving him the required post-employment election notice.

BNSF had a legitimate, non-discriminatory reason for firing him – he dangerously broke its rules in training. Moore will take nothing from BNSF Railway Company.

2. *Americans with Disabilities Act.*

To succeed on his discrimination claim, Moore must show that he was fired because of his disability.

Moore bases his claim in part on BNSF's decision to discipline him more severely than the engineer, who was suspended without pay and then put on probation. Moore says that he would have received similar discipline but for his cancer diagnosis.

The evidence indicates Moore was disciplined more severely because he was a conductor-in-training, not because he had cancer. Unlike Moore, the engineer had completed his new hire period and joined a union having had several years of experience; he was entitled to collectively bargained-for rights and could not be fired without good cause. Moore – a conductor-in-training – could be fired for any or no reason at all, but not for an illegal reason.

Moore also claims that BNSF did nothing about the speeding violation until he disclosed that he had cancer and would need to take leave. He says that the temporal proximity between his disclosure and dismissal shows that BNSF fired him because he had cancer, not because he broke BNSF's rules.

Moore's timeline is incomplete and misleading. By the time Moore told BNSF that he had cancer, BNSF had verified that the speeding violation had occurred and suspended him. Moore's supervisor – who does not remember Moore's telling him about his diagnosis – then reviewed the completed investigation. He recommended firing Moore because he had broken multiple rules: Moore sped through a restricted area, failed to report the violation, and bragged about it to his coworkers.

The temporal proximity between Moore's disclosure and dismissal is not suspicious. Moore controlled the timing of his disclosure, and he chose to tell BNSF that he had cancer after making multiple reckless choices. He cannot use a discrimination claim to shield himself from the reasonable, expected consequences of his behavior.

Because no evidence indicates that Moore was fired because he had cancer, his claim fails.

3. *COBRA.*

Plan administrators – designated in each individual healthcare plan – must tell an employee that he has the right to continue his healthcare coverage after leaving his job.

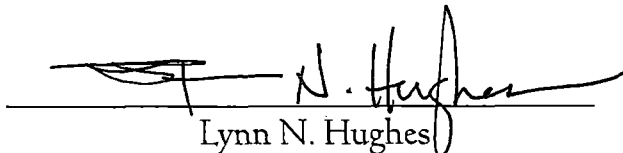
Moore's healthcare plan identifies the Governing Committee as the plan administrator, not BNSF. BNSF was not required to give him a post-employment election notice.

Moore's COBRA claim fails.

4. *Conclusion.*

Robert Moore will take nothing from BNSF Railway Company.

Signed on January 26, 2021, at Houston, Texas.

  
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Lynn N. Hughes  
United States District Judge